

March 11, 2004

Charles Danger
Director, Miami-Dade County Building Department
11805 SW 26th Street, Room 209
Miami, FL 33175-2474

RE: REQUEST FOR ADVISORY OPINION 04-33

Dear Mr. Danger:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your request.

You requested an interpretation of Section 2-11.1 (q) "Continuing application for two (2) years after County service," [commonly referred to as "the two-year rule"] of the Conflict of Interest and Code of Ethics Ordinance as it applies to former employees of the Building Department.

According to the facts submitted in your letter, a number of former Building Department employees have left their County positions and are presently working as consultants, permit expeditors and employees of developers. In addition, some former Building Department employees have opened their own companies, whereby they assist individuals in resolving Building Code violations. While Section 2-11.1 (q) prohibits former County employees from lobbying for a period of two (2) years after leaving County service, the section does not prohibit those employees from submitting routine administrative requests or applications to the County.

You specifically asked the Ethics Commission whether the following activities constitute lobbying or routine administrative requests, as defined under Section 2-11.1 (s) and Section 2-11.1 (q), respectively.

- (1) Former employees, who are presently self-employed, engage in the following activities:
- Represent building code violators at ticket appeal hearings
 - Negotiate settlement agreements with department staff on unsafe structures cases and ticket cases
 - Interact with department staff in order to obtain building permits for clients
- (2) Former employees, who work for developers, engage in the following activities:
- Submit permit applications and plans for processing
 - Meet with County staff to discuss the timeliness of plan reviews
 - Meet with County staff to review and to discuss requested modifications to plans as part of the permitting process

Furthermore, you requested information regarding the appropriate procedures and requirements departmental staff should follow when lobbied by former County employees.

Firstly, under Section 2-11.1 (s) of the Conflict of Interest and Code of Ethics Ordinance a lobbyist is defined as someone who seeks to encourage the passage, defeat or modifications of 1) ordinance, resolution, action or decision of the County Commission; 2) any action, decision, recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a county board or committee.

Section 2-11.1(q)(1) “Continuing application for two (2) years after County service,” provides that,

No person who has served as an elected official, i.e. mayor, county commissioner, or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager, department director, departmental personnel or employee shall for a period of

two (2) years after his or her county employment has ceased, lobby any county officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether, direct or indirect...Nothing contained in this Subsection (q)(1) shall prohibit any individual included within the provisions of this subsection from submitting a routine administrative request or application to a county department or agency during the two (2) year period after his or her county service has ceased.

For purposes of this subsection, lobbying by former employees contemplates a broad interpretation and common understanding of the word 'lobbying' by capturing activities and subject matters which may not be precisely outlined by subsection (s) in its definition of "lobbyist."

Issue One:

Regardless of whether the former employee is self-employed or employed by a developer, former employees engaged in activities that entail representation of code violators at ticket appeal hearings and settlement negotiations with County staff on behalf of third parties would clearly constitute lobbying, as it is defined under Section 2-11.1 (s). Those activities are seeking some action, decision or recommendation by County staff on behalf of third parties; they are not considered within the scope of "routine administrative requests." Therefore, in accordance with the two-year rule, the former County employees would be prohibited from engaging in those activities for a period of two (2) years after their County employment has ceased.

Interactions with staff, which may include written or verbal communications, in order to obtain permits for clients, may be considered lobbying, dependent upon the circumstances. Certainly, former employees would be allowed to engage in interactions with staff which are ministerial in nature, such as filing permit applications, obtaining documents or requesting information about a permit.

Previously, the Ethics Commission has opined that the two-year rule's prohibition is broad. [See, RQO 01-38] Communications and activities, whereby former employees are trying to persuade County staff on a particular course of action or to make some determination, are considered lobbying. For example, in RQO 02-139, the Ethics Commission concluded that a former city employee was not permitted to seek a zoning modification from a City planning board, or to persuade a City official to take a particular course of action related to his new employment with a developer.

Issue Two:

You outlined additional activities former Building Department employees are engaged in on behalf of developers in their post-County employment. Under the Code of Ethics Ordinance, former County employees are not prohibited from submitting routine administrative requests or applications. You indicated that former employees visit the department on a daily basis to submit permit applications and plans. Under the two-year rule, this activity falls within the scope of routine administrative requests or applications. In previous opinions, the Ethics Commission determined that the two-year rule did not prohibit former County and city employees from providing information to government personnel, submitting applications and requesting and researching items as part of administrative requests since these actions were regarded as ministerial in nature. [See, RQO's 00-145; 01-38; 02-139]

However, activities that entail meetings with County staff to discuss the timeliness of plan reviews or requested modifications to plans or permits may be considered lobbying, and therefore, deemed impermissible under the two-year rule. This determination would be made on a case-by-case basis. For example, if the former employee, on behalf of a third party, meets with Building Department officials to explain the reasons [technical, structural, financial, etc...] for certain building plans and at the same time tries to persuade those officials to expedite the review process and/or offers to make some modifications to plans so that they can be approved more expeditiously, the former employee would be engaged in lobbying. As you indicated, most of the meetings occur with Building

Department officials who have the authority to make decisions or take some official action.

On the other hand, if the former employee meets with staff to ask only a procedural question, such as confirming receipt of plans and permit applications or inquiring about the status of the submitted plans, this type of activity would not be considered lobbying, but rather a routine administrative matter.

Lastly, the Code of Ethics, and more specifically Section 2-11.1 (q), does not address the responsibility of department staff when lobbied by former County employees. However, as a recommendation, County staff, at minimum should ask former employees when they left their County employment. If the former employees are still within the two-year period, staff may inquire whether they have requested an opinion from the Ethics Commission regarding post-County employment activities, some of which may include lobbying. Department staff always have the prerogative to refuse to meet with former employees if they believe they have been lobbied or will be lobbied by former employees.

Additionally, any employee or former employee may always contact the Ethics Commission to discuss the application of the Code of Ethics as it relates to their individual situation or to discuss potential violations of the Ordinance.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director